Opening Statement for Congressman Vito J. Fossella
"Regulation NMS: The SEC's View"
Tuesday, March 15th, 2005
Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises
Committee on Financial Services

Since the start of the Securities and Exchange Commission's proposed Regulation NMS, it was clear that the cornerstone of this debate would be centered on the trade-through rule. And although at first glance it would appear obvious that an investor, large or small, should get his or her order filled at the best price available, we have learned there is a lot more to this debate than just getting the best price. With the advent of new technologies, three other variables have become increasingly important: speed, certainty, and size of execution. In fact these three variables have been what has driven this debate to the point of SEC action.

The trade-through rule was established as an ITS rule in an effort to both increase the connectivity between markets, and to ensure that traders captured the best available execution price for their clients. Thus, if a broker on the floor of the Boston Exchange needs to buy 2000 shares for a client, if the national best bid or offer is at the Philadelphia Exchange, the rule forces the broker to execute at the Philadelphia Exchange so that the investor is assured the best representation. The result was a national market system where market competition and order competition thrived.

While this rule was clearly of good intentions when first implemented, as the NASDAQ and electronic communication networks (ECNs) grew, an increased number of market participants found that the internal rules of floor based exchanges, particularly the New York Stock Exchange, prohibited them from obtaining the best price for their clients. The first of the rules allows a specialist to hold an order for up to 30 seconds before confirming or denying order execution; the second limits the size of an order that can be sent through the NYSE's electronic order submission to no more than 1099 shares. With these rules in place, I agree that a trader sitting at a trading desk outside the walls of the NYSE has every right to be frustrated when they could be executing a trade immediately, with certainty of execution, and at whatever size is available, but instead must either break the order up into lots of 1099 shares, or hire a representative on the floor of the exchange who can execute the size their client is looking for.

Once implemented, Reg NMS will eliminate the limitations experienced by traders outside the walls of the floor based exchanges, allowing them the ability to operate in a marketplace with speed, certainty, and size. In addition, Reg NMS allows investors not wanting to participate with a slow quote to trade around that quote.

With the elimination of these rules, the trade-through rule will once again work in the favor of the investor with increased enforcement from the Securities and Exchange Commission.

Finally, I believe the trade-through rule under Reg. NMS, when properly enforced, will be a net plus for both the confidence of the individual investor that has grown skeptical of Wall Street during the past 5 years, and for the confidence of foreign investors who desire to invest their money in the United States. The influx of capital from foreign investors has doubled over the past decade and will likely continue to increase as foreign countries become wealthier and as foreign companies decide to access U.S. capital by listing on U.S. exchanges. I believe it is important that the United States provide a vibrant marketplace where all investors and all companies looking to participate in them, can do so with confidence that there are regulatory backstops in place to protect them from being unfairly disadvantaged.

In conclusion, I want to thank the SEC again for their efforts. I think the staff has found a good balance of proposals that open the marketplace to competition while maintaining principles that ensure the investor remain protected.